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DISCUSSION KICK-OFF

Civilian Harm Tracking: An Important Tool During Armed Conflict

ELLEN POLICINSKI — 12 January, 2015



Civilian harm is a tragic consequence of armed conflict. Incidental civilian harm – or collateral damage – is prevalent in modern conflicts, which often involve armed groups operating from within the population. Recent examples include operations in Afghanistan, Somalia, Syria, Iraq and the Gaza Strip. The emerging practice of civilian harm tracking is one tool that parties to armed conflict can use to better understand and address this tragic consequence of war, and should be integrated into the structure of armed forces even before hostilities break out, so that it is already operational by the time it is needed. Civilian harm tracking

can be linked to States' international humanitarian law (IHL) obligations.

Distinction, Proportionality and Precautions

IHL rules governing the conduct of hostilities are designed to prevent suffering and protect civilians from the effects of the violence, to the extent possible. To that effect, IHL requires that the parties to a conflict respect the principles of distinction and proportionality and take precautions in attack. These principles are embodied in the conduct of hostilities rules in the First Additional Protocol to the Geneva Conventions in articles 48-58, which is generally accepted as international custom.

While there may not be an express legal requirement for warring parties to track the harm they cause during armed conflict, the need to understand the harm caused by military operations. Additionally, IHL obliges warring parties to search for, collect, and care for the wounded and dead in both international and non-international armed conflict, which also implies that there will be some post-action investigation.

Civilian harm tracking is a tool that can help armed forces to ensure that they are in compliance with the principles of distinction and proportionality. Civilian harm tracking is an internal process by which parties to a conflict can systematically gather data on civilian deaths and injuries, property damage or destruction, and other instances of civilian harm caused by operations. Such tracking allows warring parties to understand the impact military operations have on the population and learn lessons to better protect civilians.

Duty to Investigate

Although civilian harm tracking is not solely focused on violations of international law, it can help fulfill the duty to investigate violations of certain IHL obligations. States have an obligation to investigate alleged war crimes in both international and non-international armed conflicts.

Some go further still, arguing that a duty to investigate all civilian harm is necessarily implied by the duty to investigate incidents of grave breaches and the duty to punish offenders, since these obligations would be impossible to fulfill without examining civilian casualty incidents more generally. The duty to investigate military conduct in times of armed conflict would therefore necessarily go beyond the requirement to investigate war crimes to include incidental civilian harm arising from lawful attacks on legitimate military objectives.

Tracking Civilian Harm

Understanding the harm caused in all attacks, including during lawful attacks, can give armed forces a better understanding of the end result of their operations and help reduce harm caused to the civilian population.

Most militaries already engage in some form of investigation (criminal or administrative) including after action reviews and battle damage assessments. The results of these reviews are not usually made public. Data on civilian harm caused by military operations is most likely collected, although it is unclear how much data is aggregated and analyzed.

There are increasingly examples where there is an existing mechanism for tracking the impact militaries have on

civilians already in place, or one in the process of being implemented. At the forefront of developing harm tracking as a tool is the Center for Civilians in Conflict (CIVIC), a U.S.-based organization. One piece of CIVIC's work is focused on getting warring parties to track all harm caused by the military's operations. CIVIC's efforts are most notable in advocating for the establishment of units or cells within a warring party to track and analyze incidents and allegations of civilian harm. The aggregated data collected and analyzed by such cells provides information to commanders to see the effects of their operations on the civilian population and change tactics accordingly.

The UN has indicated its support for the practice of civilian harm tracking. In November 2013, the UN Secretary General's report on protection of civilians specifically recommended civilian casualty tracking as a tool for militaries to assess the impact of their operations on the civilian population, and further recommended that militaries and peacekeeping missions track civilian casualties. The Security Council has also recognized the importance of taking measures to mitigate civilian harm and in Resolution 2098, passed in March 2013, instructed MONUSCO's Force Intervention Brigade in the Democratic Republic of Congo to "mitigate risk to civilians before, during, and after any military operations." A tracking analysis response cell is one tool that can be used to this end.

In practice

The best example of a working harm tracking cell to date is the tracking cell used by International Security Assistance Force (ISAF) in Afghanistan, which established the first Civilian Casualty Tracking Cell (CCTC, now the Civilian

Casualty Mitigation Team, CCMT). Those involved in that cell cited transparency and buy-in from leadership as one of the most important keys to the success of the harm tracking cell. It was noted that in situations where there are low-level, decentralized hostilities, it is especially challenging to build support for tracking civilian harm as local commanders may feel that they understand their immediate operational environment better than far-off decision makers and may not welcome new limitations on their operations.

A similar cell is currently in the process of being implemented by the African Union Mission in Somalia (AMISOM). Creation of AMISOM's Civilian Casualty Tracking, Analysis and Response Cell was recommended in AMISOM's Indirect Fire Policy, which provided guidance on the use of indirect fire to reduce civilian harm during military operations. It has also been noted that civilian harm tracking cells should be instituted by UN peacekeeping operations with offensive mandates.

These examples all involve sophisticated organized armed forces. Non-State armed groups or other armed operators with less sophisticated reporting structures would be unlikely to be able to implement such a tracking cell, although they could contemplate other methods of tracking civilian harm.

Conclusion

Civilian harm tracking is an important tool that can help warring parties comply with their IHL obligations as it allows not only to assess violations, but to assess how to reduce incidental or so-called collateral damage. The role of collecting data on civilian harm in modern military

operations will only become more important as time goes on. Tracking the number of casualties and injuries caused by military operations allows armed forces to see patterns, identify problems and improve over time to reduce civilian harm.

A response to this post can be found [here](#).

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